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In The
Supreme Court of the United States

JAMES J. McMONAGLE,
THE LEGAL REPRESENTATIVE
FOR FUTURE CLAIMANTS,

Petitioner,

v.

CREDIT SUISSE FIRST BOSTON,
AS AGENT, *ET AL.*,

Respondents.

**On A Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

"Substantive consolidation" is a remedy ordered from time to time in bankruptcy proceedings. In essence, it consolidates the assets and liabilities of affiliated debtor corporations for purposes of determining the overall estate available for payment to the creditors of all such corporations, so as to facilitate efficient and equitable reorganization, rather than determining that issue on a company-by-company basis within the multi-corporate enterprise.

1. Is substantive consolidation a remedy of "last resort" that should be available, if at all, only when a "nearly 'perfect storm'" of factors coalesce to (a) show debtor malfeasance or (b) make "every creditor" better off as a result of the remedy, or should it be available more broadly, as several other federal courts of appeals have held, to further the underlying bankruptcy law goal of an efficient and equitable satisfaction of all creditors' claims?

2. Should the district court's grant of substantive consolidation have been upheld where the facts satisfied the standard utilized by several other courts of appeals for invoking that remedy - *i.e.*, where there was substantial identity among the affiliated debtor corporations, where the complaining creditors were found not to have relied on the separate credit of the individual corporate affiliates, and where that remedy would have provided an important benefit in terms of the fair and expeditious resolution of the reorganization in question?

**QUESTIONS PRESENTED
FOR REVIEW - Continued**

3. Should the court of appeals have substituted its own findings regarding key factual issues for those of the district court, or should it have sustained the factual findings of the district court inasmuch as those findings were not held to be clearly erroneous under Rule 52(a) of the Federal Rules of Civil Procedure?

RULE 14.1(b) STATEMENT

In addition to petitioner James J. McMonagle, Legal Representative for Future Claimants, defendants/appellees in the court of appeals were respondents Owens Corning, Debtors;¹ the Official Committee of Asbestos Claimants; and the Official Representatives of the Bondholders and Trade Creditors of Owens Corning. Respondent Credit Suisse First Boston, plaintiff/appellant in the court of appeals, is the agent for a syndicate of prepetition bank lenders including: Bear Stearns & Co., Inc., Loews Corporation, Societe Generale, Bank of America, J.P. Morgan Chase Bank, and Credit Lyonnais.

RULE 29.6 STATEMENT

Petitioner James J. McMonagle, Legal Representative for Future Claimants, is not a corporate entity, has no corporate parents, and has no publicly traded stock.

¹ Owens Corning, Debtors includes Owens Corning (Delaware), Engineered Yarns America, Inc., Exterior Systems, Inc., Falcon Foam Corp., Fibreboard Corp., Home Experts, Integrex, Integrex Professional Services, Integrex Testing Systems, Integrex Supply Chain Solutions, LLC, Integrex Ventures LLC, Jefferson Holdings, Inc., Owens-Corning Fiberglas Technology, Inc., Owens-Corning HT, Inc., Owens-Corning Overseas Holdings, Inc., Owens-Corning Remodeling Systems, LLC, and Soltech, Inc.

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